Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (McLean Trucking Co.) *and* Gerald A. LaBond. Case 7-CB-4840

19 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 2 November 1983 Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief and a cross-exception.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order.

The judge concluded that the Respondent violated Section 8(b)(1)(A) of the Act by failing to fairly represent its members employed by McLean Trucking Co. at its Detroit, Michigan terminal. We agree, but only for the following reasons.

The Respondent has represented McLean's employees at the Detroit facility for many years. During the period relevant to this case, the employees were covered by the Teamsters National Master Freight Agreement and local supplements, effective from 1 April 1979 through 31 March 1982. That contract contained a no-strike provision which prohibited, with certain exceptions not relevant here, work stoppages authorized by the Union. In addition, the no-strike provision provided that no work stoppages would be considered to have been authorized by the Union unless (1) the Employer notified the Union by telegram that a work stoppage had taken place, and (2) the Union did not respond to the telegram. In other words, work stoppages would be deemed unauthorized if the Union did not respond to the Employer's telegraphic notification that a work stoppage was taking place. Also pursuant to the no-strike provision, employees participating in an unauthorized work stoppage lasting 24 hours or less could be subject to suspension by the Employer for up to 30 days with no recourse to the grievance procedure. Employees participating in longer unauthorized work stoppages were subject to discharge, again with no grievance rights.

In September 1979 the Employer assigned a new terminal manager, Phillip Jennings, to the Detroit facility, and instructed him to improve the terminal's profitability. Jennings' early efforts in that regard included a tightening of the enforcement of work rules which led to some suspensions, discharges, and grievances. In late 1979 Jennings discussed with the Respondent's business agent George Langkil and the steward Murray Duncan the possibility of eliminating the positions, or "bids," then scheduled for the 7 a.m. to 3:30 p.m. shift, but no immediate action was taken.

On 18 March 1980[2] Jennings had a meeting with the employees, at the request of Langkil and Duncan, at which employees expressed their concerns and displeasure regarding the possibility of Jennings' eliminating the three 7 a.m. to 3:30 p.m., or "day-dock," bids, his enforcement of certain work rules, and other matters. The employees who were scheduled to work during the meeting were paid by the Employer for the 2 hours the meeting lasted, and midnight shift employees who stayed at the terminal beyond their normal quitting time to attend the meeting were paid overtime. The following day, Jennings announced that 10 employees would be laid off and the "day-dock" bids would be eliminated as of 24 March.[3] Thereafter, employees who were not to be laid off were informed that they could bump to another bid according to their seniority and, on 21 March, Jennings posted the new starting times for the affected employees.

According to the credited evidence, on 24 March the three employees whose "day-dock" bids had been eliminated, along with Duncan, Langkil, and at least three other business agents, came to the timeclock area at 7 a.m. Langkil asked Jennings, who met the men at the timeclock, for the three employees' timecards, and Jennings refused. Langkil announced that the Union was going to have a meeting, and Jennings replied that no meeting could take place at that time. The business agents nevertheless told the employees when they arrived to go to the breakroom because a meeting was taking place. At 8 a.m. an automatic buzzer sounded, signaling the start of a work shift, and Jennings had the dispatcher announce the start of

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent's request for oral argument is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] Hereinafter all dates are 1980.

[3] The contract provided that the Employer could change the bids only on 1 November and 1 April of each year unless a layoff occurred, in which case bids could be changed when the layoff took effect.

the shift over the public address system. Jennings then went to the breakroom and told the employees there he expected everyone to start working. Jennings then told Langkil once more that no meeting would take place, and Langkil said no one would work until the "day-dock" bids were reinstituted. At 8:30, when another shift was scheduled to begin, another public address announcement was made, Jennings told Langkil he wanted the employees to begin working, and Langkil again said that no one would work until the three former "day-dock" employees were given back their bids.

At 10 a.m., pursuant to the no-strike provision described above, Jennings sent mailgrams to the Respondent's International president, the chairman of the Central Conference of Teamsters, and the Local president, Bob Lins, which asked whether the work stoppage was authorized. Jennings then informed Langkil of this fact and read the no-strike provision of the contract to him. The Employer received no response to the mailgrams. At or about 3 p.m., Lins came to the terminal and told Jennings that no one would work until "I . . . tell you how the bids are going to be." That night, during a meeting held at the union hall at or about 10 p.m., Lins told the employees that the midnight shift should report to work on time, and said, "You can stay out 23 hours and 59 minutes, and they can't do anything to you." The employees returned to work on the midnight shift. Subsequently, the Employer, pursuant to the contract, suspended for 30 days the employees who did not work on 24 March.

As noted, the judge concluded that the Respondent violated Section 8(b)(1)(A) of the Act by its actions of 24 March. He found that the Union instigated and caused a work stoppage in violation of the contract without informing the employees that the work stoppage violated the contract or that the violation subjected them to disciplinary action. The judge further found that by causing the work stoppage the Union used the majority of the unit employees as leverage and placed the interests of the three "day-dock" employees above those of the other unit employees. Noting that the Supreme Court in *Ford Motor Co. v. Huffman*[4] defined a union's duty of fair representation as requiring "complete good faith and honesty of purpose in the exercise of its discretion," and that pursuant to cases such as *Miranda Fuel Co.*[5] and *Vaca v. Sipes*[6] unions have a fiduciary duty to the employees they represent, the judge found that the Respondent had a duty in this case, which it failed to meet, "to make sure the employees were aware of the possible consequences of their action and extend to them a choice." While we agree with the judge's conclusion that, under the standards of the cases cited by him, the Respondent violated its duty of fair representation owed to the employees who were suspended for 30 days, we do so for the reasons set forth below.

The Respondent's position communicated to the employees on 24 March, to the judge at the hearing, and to the Board in its exceptions is that the events of 24 March constituted a meeting which the Employer agreed to allow, similar to the meeting of 18 March, and not a work stoppage within the meaning of the contract. The credited evidence and all the circumstances surrounding that day's events, however, clearly show that the Union's position never was taken in good faith. The only evidence that Jennings agreed to a meeting is the discredited testimony of the Respondent's agents. The credited evidence shows not only that Jennings refused to permit a meeting, but also that Langkil and Lins told Jennings the employees would return to work if Jennings agreed to the Union's demand regarding the "day-dock" bids. Further, in addition to sending the telegrams required by the no-strike clause, Jennings read to the union agents the contract language which expressly provided that employees engaging in an unauthorized work stoppage could be suspended for 30 days if the stoppage lasted 24 hours or less, or discharged if the stoppage lasted longer. Additionally, Lins' later statement to employees that they could not be disciplined if they refused to work "23 hours and 59 minutes" shows that the Respondent was well aware of the contractual provision governing its actions and establishes that the Union continued to mislead the employees concerning the consequences of those actions even while the Union was ending the "unauthorized" work stoppage. These facts belie the Union's assertion that it had a good-faith belief that its actions on 24 March merely amounted to the holding of a union meeting. Rather, it is clear from the foregoing that the record establishes that the Union was encouraging the employees it represented to withhold their services in order to pressure the Employer into changing working conditions. No one familiar with labor relations could consider the Union's actions to be anything but a work stoppage.

We further find that in the circumstances of this case the Union's conduct was arbitrary. Thus, pursuant to the contract, the Union had absolute control over whether a work stoppage would be considered unauthorized and, consequently, whether the participating employees would be subject to severe discipline. By failing to respond to the Em-

[4] 345 U.S. 330, 338 (1953).
[5] 140 NLRB 181 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963).
[6] 386 U.S. 171 (1967).

ployer's telegram, the Union exercised this control in a way that placed most of the unit employes in jeopardy of discipline. Although the Union's goal of advancing the interests of the three "day-dock" workers undoubtedly was a legitimate one, it was not free while pursuing that goal to encourage the employees to violate the contract. As a result of the Union's entire course of conduct the employees to whom it owed a duty of fair representation were placed in the difficult position of having to decide whether to return to work, as requested by their terminal manager, or obey their collective-bargaining agent's instructions to report to the breakroom for a meeting. Regardless of whether the employees believed the events of 24 March constituted a meeting or a work stoppage, they had the right to expect that the union would not encourage them to violate the contract in a way that would expose them to a loss of income or even of employment. The Union did precisely that. Accordingly, we conclude that the Union's conduct can only be considered to have been arbitrary, in total disregard of the no-strike provision of the contract which repeatedly was brought to its attention by the Employer, and of the consequences of its actions on the employees.

Based on the foregoing, we conclude that the Respondent's conduct on 24 March fell far short of the requirement that a union act with respect to the employees it represents in complete good faith and honesty and that the Respondent's actions were arbitrary. Accordingly, we find that the Respondent breached the duty of fair representation owed by it to the employees it represents, and thereby violated Section 8(b)(1)(A) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Detroit, Michigan, its officers, agents, and representatives, shall take the action set forth in the Order.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. Upon a charge filed on July 7, 1980,[1] by Gerald A. LaBond, a complaint was issued July 16, 1981, alleging that the Union described above violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by instigating and causing a work stoppage at the facility of McLean Trucking Co. in violation of the no-strike clause in the current collective-bargaining agreement without accurately informing its members, employees of McLean, of the Employer's right to subject the employee-members to discipline for such conduct, and thereby violated and failed in its duty of representation to said employees. Respondent denies the allegations.

A hearing was held in Detroit, Michigan, on May 16–18, 1983. On the entire record in this case, including my observation of the demeanor of the witnesses and consideration of the briefs filed in August 1983 by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

McLean, a North Carolina corporation, maintains a motor carrier terminal in Detroit. The complaint alleges, Respondent admits, and I find that at all times material herein McLean has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Respondent Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Facts*

Phillip Jennings became terminal manager of McLean's Detroit facility in September 1979. Before receiving the assignment, Jennings was advised by District Manager Ron Williams that the Detroit operation was unprofitable and that Jennings should take steps to make it profitable. Shortly after he arrived at the terminal, Jennings issued numerous written warnings and reprimands to his subordinates. Also, Jennings instituted a new policy whereby a supervisor would write down when an employee went into the lunchroom and when that employee returned to his work station. While Jennings' predecessor allowed 3 minutes washup time at lunch and 5 minutes washup time at the end of the shift, Jennings terminated this practice writing up recalcitrant employees for "stealing time." Specified employees were fired for this alleged dishonesty. Grievances were filed. And the employees returned to work with their time off considered disciplinary time.

According to the testimony of Jennings, business conditions worsened in late 1979, which in turn necessitated a reduction in the number of people working on McLean's day-time shift, 7 a.m. to 3:30 p.m. More specifically, Jennings decided to eliminate three "day-dock" positions and use the three men and their bids at a different time of the day. Jennings discussed this matter with Respondent's business agent George Langkil and union steward Murray Duncan, both of whom disagreed with Jennings. The matter was then dropped. Subsequently, Jennings decided to make the change and posted it on a bulletin board. Pursuant to the change, two of the involved bids were to begin working at midnight and the remaining bid was to begin working in the afternoon. Langkil and Duncan discussed the posting with Jennings, and as a result Jennings decided not to make the change. Nonetheless, Jennings advised Langkil and Duncan that

[1] All dates are in 1980 unless stated otherwise.

if it became necessary to lay off employees in the future these three bids would be eliminated. Business conditions continued to deteriorate and Jennings was pressured by his superior to reduce the work force accordingly. About the second week in March, Jennings decided to lay off 10 employees and, in doing so, eliminated 10 bids. Three of the bids to be eliminated were the "day-dock" positions. The three men holding these positions were not going to be laid off because of their seniority, but they would have to bid on other positions.

Before this decision was implemented, however, Langkil and Duncan visited with Jennings in his office requesting that Jennings hold a meeting so that the employees could voice some of their grievances. The request was made on Tuesday morning, March 18. Jennings agreed and immediately he called the dock office supervisor and told him that there was going to be a meeting and to instruct the employees to report to the breakroom. The meeting began at 8 a.m. and lasted for 2 hours. Approximately 40 employees attended. They were paid for their time, with midnight shift employees receiving overtime. The meeting was a general gripe session, and matters discussed included the elimination of the three "day-dock" jobs, McLean's use of "casuals" (nonunion workers who do not have any seniority and work on an on-call basis) and the reasons for the writeups. The employees were not aware this time, however, of Jennings' planned layoffs.

Fifty-one of McLean's employees filed a grievance on March 18 after the meeting alleging, among other things, that "[t]he Company informed us today that as of the next job bid, which goes into effect May 1, 1980 there would be no day-dock jobs." (R. Exh. 4.) Actually, bids are made every 6 months, effective on November 1 and April 1, and normally cannot be broken during the 6-month period, except for a layoff.

On March 19 Jennings posted a "BID REDUCTION DUE TO LAYOFF" memorandum. (R. Exh. 3.) As indicated therein, the three "day-dock" jobs were to be eliminated 1 minute before midnight March 23. Affected employees who were not laid off were advised in the memorandum that they could bump to another bid in line with their seniority.

On Friday, March 21, Jennings posted a list setting forth the starting times for all employees effective Monday, March 24.

Six witnesses testified regarding the events of March 24. The following four were called by the General Counsel: Jennings and three individuals who were employed at McLean's Detroit terminal on March 24, namely, (1) Sharon La Dosz, who was the afternoon cashier, (2) James Eggleston, a driver, and (3) Laurene (Ayers) Lewis, who was a general office employee. And two were called by Respondent, viz., Duncan and John Burge, who on March 24 was a business agent for Respondent.

Jennings arrived at the terminal early on March 24 because he was concerned about the changes which became effective on that date. He "pulled" the timecards of the three employees whose "day-dock" bids had been eliminated, Robert Francis, John Colwell, and Robert Axt, so that if they showed up at 7 a.m. they would not be able to "punch in" for their former shift. These employees did show up for work at 7 a.m, accompanied by Duncan, Langkil, Burge, and at least two other business agents of Respondent, namely, Basil Westphal and Steve Howard.[2] Langkil asked Jennings, both of whom were standing in the timeclock area, for the three timecards. Jennings refused advising Langkill that the three would work only the bids posted on March 21. Jennings then started to leave the area walking toward his office. Langkil indicated that he was going to conduct an inspection of the terminal. Jennings protested pointing out, as pertinent, that since it was Monday he did not have the time.[3] Jennings, Langkil, and Burge walked out on the dock. Langkil approached some of McLean's casuals and told one to go home and not to come back. Jennings told Langkil he could not "run off" the casuals and Jennings asked where did all the employees go. Langkil said: "We are going to hold a meeting." Jennings refused pointing out that it was Monday and he did not have the time for a meeting. The group then went to Jennings' office where he again refused to allow a meeting. Langkil advised Jennings that no one was going to work until Jennings reinstated the three "day-dock" positions. Duncan testified that when Langkil said: "We are going to have a meeting" Duncan "walked out and got the people on the dock."

As employees showed up for the 8 o'clock shift, they were advised by Duncan to go to the breakroom. A buzzer connected to the timeclock went off automatically signaling the beginning of the 8 a.m. shift but no one began to work. Jennings had the dispatcher announce "Eight o'clockers" on the public address (PA) system in the dock breakroom, which employees knew to mean that "it's time to go to work." Lewis testified that she was in the office breakroom and heard the PA announcement regarding the start of the shift which she thought was silly because the employees were not going to work. Eggleston testified that he "punched in" about 8 a.m. When he later asked Langkil when were the employees going to work, Langkil said: "As soon as the Company has a meeting with us." When the employees did not go to work, Jennings entered the dock breakroom at about 8:05 a.m. and said: "I expect everybody that's supposed to be working or supposed to start to work at 8 o'clock to go now."

[2] Duncan believed there were six or seven business agents of Respondent present. Burge estimated that there were at least four conceding that he had a bad memory and it was possible that there were more.

[3] Duncan's and Burge's testimony that Jennings agreed to a meeting before Langkil stated that he was going to conduct an inspection is not credited. Duncan changed his testimony on the witness stand and he conceded that his recollection of this matter while testifying was not consistent with his recollection when he gave an affidavit to the Board. Burge's testimony on what was allegedly said on this matter was not in agreement with Duncan's testimony and Burge also changed his testimony on cross-examination. Moreover, in an attempt to explain why an inspection was conducted if Jennings had already agreed to a meeting, Burge testified that "[w]hat we were trying to create was the dialogue for the meeting and set the whole stage that we were going to go into." Later Burge testified that all that was requested of Jennings was that he reinstate the three "day-dock" positions. There is no question but that the Union has the right to conduct an inspection. But this action on March 24 was nothing more than a continuation of the Union's attempt to intimidate Jennings.

Jennings then went to the conference room and told Langkil, "I don't know whether you're trying to go on strike or what you're trying to do, but I want the employees to go to work immediately." Langkil replied: "We're not going on strike; we're simply having a meeting." Jennings then said: "I told you you could not have a meeting. We're not having a meeting today, and I expect those employee to go to work immediately." Langkil replied that no one was going to work until Jennings put the three "day-dock" employees to work.

At 8:30 a.m. another shift was scheduled to begin and Jennings instructed his dispatcher to repeat the above-described procedure. When the employees did not go to work, Jennings advised Langkil that Jennings wanted them to go to work. Jennings then advised Langkil that if the situation continued he would have no choice but to report it to his home office and his district manager. Langkil again advised Jennings that no one would work until the three "day-dock" employees were allowed to work. Consequently, Jennings called his district manager.

About 10 a.m. Jennings sent a number of mailgrams under the name of C. R. Jones, vice president labor relations. (G.C. Exh. 4.) Two mailgrams were sent to each of the following: (a) Frank Fitzsimmons, president of International Brotherhood of Teamsters, (b) Roy Williams, chairman of Central Conference of Teamsters, (c) Neal Dalton, Teamsters conference office, and (d) Bob Lins, president Teamsters Local 299. The first set asked whether the strike at the terminal was authorized by the International, the conference, and the local. Shortly thereafter, on the advice of his home office, Jennings sent a second set of mailgrams to the above-described recipients substituting "work stoppage" for "strike" and stating that "THIS WORK STOPPAGE IS BEING CREATED BY LOCAL 299 BUSINESS AGENTS KEEPING OUR PEOPLE FROM WORKING WHICH IS CONTRARY TO THE CONTRACT." Jennings never received a response to any of the above-described telegrams.

Then, pursuant to the advice of the home office, Jennings told Langkil: "I have sent the telegrams. The Company knows that we have a work stoppage here, or a strike, or whatever you're calling it." But once again Langkil advised Jennings that no one would work until the three "day-dock" jobs were put back.

Subsequently, again pursuant to the advice of his home office, Jennings read article 8, section 2(b) of the contract, General Counsel's Exhibit 2(a), which, according to the testimony of Jennings:

> . . . provides that in the event of an unauthorized work stoppage, that those employees involved less than 24 hours can receive up to thirty day's suspension without pay, and those that are involved in a work stoppage in excess of 24 hours can be discharged.[4]

Jennings testified that after reading article 8, section 2(b) he told Langkil that he was going into the breakroom and talk to the employees and Langkil "was free to come along"; that Langkil declined; that he went into the breakroom and

> I told those—this was approximately 9:15, 9:30 somewhere along there . . . . That I considered them being involved in a work stoppage at this

[4] Pertinent portions of the agreement read as follows:

Section 2. (a) *Work Stoppages* . . . except as specifically provided in other Articles of the National Master Freight Agreement, no work stoppage, slowdown, walkout or lockout shall be deemed to be permitted or authorized by this Agreement except:

(1) failure to comply with a duly adopted majority decision of a grievance committee established by the National Master Freight Agreement or Supplemental Agreement.

(2) a National Grievance Committee deadlock of a grievance rendered pursuant to the procedures provided herein;

(3) failure to make health and welfare and pension payments in the manner required by the applicable Supplemental Agreement; and

(4) refusal to pay the negotiated hourly and mileage increases provided by this Agreement, Supplements and Riders thereto. Bona fide disputes concerning such matters shall be presented to the grievance procedure. Bona fide disputes shall not include an inability to pay.

. . . .

. . . The Local Union shall not authorize any work stoppage, slowdown, walkout, or cessation of work in violation of this Agreement. It is further agreed that in all cases of an unauthorized strike, slowdown, walkout, or any unauthorized cessation of work which is in violation of this Agreement the Union shall not be liable for damages resulting from such unauthorized acts of its members. In the event of a work stoppage, slowdown, walkout or cessation of work, not permitted by the provisions of Article 8, Section 2(a), alleged to be in violation of this Agreement, the Employer shall immediately send a wire to the appropriate Area Conference to determine if such strike, etc., is authorized.

No strike, slowdown, walkout or cessation of work alleged to be in violation of this Agreement shall be deemed to be authorized unless notification thereof by telegram has been received by the Employer and Local Union from such Area Conference. If no response is received by the Employer within twenty-four (24) hours after request, excluding Saturday, Sunday and holidays, such strike, etc. shall be deemed to be unauthorized by the Area Conference for the purpose of this Agreement.

In the event of such unauthorized work stoppage or picket line, etc., in violation of this Agreement, the Local Union shall immediately make every effort to persuade the employees to commence the full performance of their duties and shall immediately inform the employees that the work stoppage and/or picket line is unauthorized and in violation of this Agreement. The question of whether employees who refuse to work during such unauthorized work stoppages, in violation of this Agreement, or who fail to cross unauthorized picket lines at their Employer's premises, shall be considered as participating in an unauthorized work stoppage in violation of this Agreement may be submitted to the grievance procedure, but not the amount of suspensions herein referred to. It is specifically understood and agreed that the Employer, during the first twenty-four (24) hour period of such unauthorized work stoppage in violation of this Agreement, shall have the sole and complete right of reasonable discipline, including suspension from employment, up to and including thirty (30) days, but short of discharge, and such employees shall not be entitled to or have any recourse to the grievance procedure. In addition, it is agreed between the parties that if any employee repeats any such unauthorized strike, etc., in violation of this Agreement, during the term of this Agreement, the Employer shall have the right to further discipline or discharge such employee without recourse for such repetition. After the first twenty-four (24) hour period of an unauthorized stoppage in violation of this Agreement, and if such stoppage continues, the Employer shall have the sole and complete right to immediately further discipline or discharge any employee participating in any unauthorized strike, slowdown, walkout, or any other cessation of work in violation of this Agreement, and such employees shall not be entitled to or have any recourse to the grievance procedure. The suspension or discharge herein referred to shall be uniformly applied to all employees participating in such unauthorized activity. The Employer shall have the sole right to schedule the employee's period of suspension.

> point, and that they were expected to go back to work immediately and their failure to go back to work would result in disciplinary action, as provided under Article 8, and that they could be given 30 day's suspension or discharged. And I told them I expected them to return to work immediately. And I left there and went into the office breakroom and did the same thing. And then I proceeded into the conference room where George Langkil was and told him the same thing, what I had just told those employees[;]

and that Langkil asserted that Jennings could not do that saying, "This is not a strike, this is not a work stoppage. This is a meeting." Eggleston testified that he arrived at the terminal around 8 a.m. and that a couple of hours later Jennings came into the drivers' breakroom and said only that there was work available. Lewis testified that sometime before lunch Jennings came into the office breakroom and said "that there was work to be done out in the office, and that we were welcome to go back to our desks and start working"; that the union business agent who was present, along with Duncan, when Jennings spoke, told Jennings that there was a union meeting and Jennings left; and that either before Jennings came in or after he left the union business agent told the employees in the office breakroom that "we were having a union meeting to protest the elimination of the day-dock worker shift." Duncan testified that during March 24 Jennings never said anyone would be disciplined. Jennings' above-described testimony regarding his warnings of possible disciplinary action is not credited. Not only is there a sequencing problem with the testimony, but the General Counsel did not call any employee to corroborate Jennings on this point, even after two employees the General Counsel did call testified that Jennings did little more than in effect, invite them to work. Intimidation was the Union's tactic and it was successful with respect to Jennings. That day Jennings did not really tell union business agents or unit employees what to do; he, in effect, asked.[5] While the home office may have instructed him to read article 8, section 2(b), and warn the employees of possible discipline, in my opinion, Jennings complied with only the first half of this directive.

About 3 p.m. Lins arrived at the terminal and met with Jennings. It was Lins' position that Jennings should reinstate the three "day-dock" bids otherwise he was "violating the contract . . . [since assertedly he could not make] this change without the normal bid procedure at the normal bid time, which is April 1st." Jennings again refused pointing out that he had laid off 10 people and, therefore, he could eliminate the same number of bids. Later Lins advised Jennings that there would be a union meeting that night and "we'll let you know tomorrow what your bids are going to be like." Also, Lins stated: "Nobody will be going back to work until I get back with you tomorrow morning to tell you how the bids are going to be." Burge's testimony that Jennings gave his permission for employees to attend this off-premise meeting is not credited. According to Burge, Jennings said, "Whatever it takes to solve the problem that's what I want to do"; Jennings would do "anything" to resolve the problem. Burge, however, could not explain why if this was Jennings' position Jennings did not simply reinstate the three "day-dock" positions. Jennings testified that he did not give permission for employees to attend an off-premise meeting. His testimony is credited.

Jennings testified that somewhat after 4 p.m. his supervisor indicated that he went in at 4 p.m. and advised employees that they were expected to go to work. Jennings himself then went to the office breakroom which was empty. He then went to the drivers' breakroom and saw several employees, some of whom were playing cards. La Dosz testified that she played cards in the drivers' breakroom from about 4 to 10 p.m. Jennings testified on direct that he advised the employees in the drivers' breakroom who were supposed to begin their shift at 4 p.m. "that there would be disciplinary action taken against those employees who refused to go to work." On cross-examination Jennings testified:

> I went in—I don't remember if I told them it was an unauthorized work stoppage. I remember going in and telling them the same thing I told them at 9 o'clock, that they were to report to work immediately and their failure to report to work would result or could result in up to 30 days off.
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> . . . .
>
> Yes, and also discharge.[6]

La Dosz testified that she recalled Jennings coming into the drivers' breakroom around 4:30 but "[h]e did not say anything. He just walked in . . . [a]nd got a cup of coffee out of the . . . vending machines . . . in the drivers' breakroom."[7] Again Jennings cannot be credited. Two witnesses called by the General Counsel contradict him. And Jennings himself indicates at one point he warned employees of disciplinary action only once during March 24 and then indicates that he issued disciplinary warnings twice to employees on that day. La Dosz' testimony is credited. Jennings said nothing to the employees in the drivers' breakroom at 4:30 p.m.

The meeting was held at Local 299 at 10 p.m. on March 24. Approximately 40 of McLean's employees attended. La Dosz, who was there, testified that one midnight shift employee asked whether he should report for work; and that Lins said the midnight shift should report stating: "We could be off 23 hours and 59 minutes without any action being taken and go back to work." Later she testified that Lins said: "You can stay out 23 hours

[5] Burge testified that Langkil, on Friday March 21, asked Burge to "aid . . . or assist him at McLean . . . on Monday morning. The conversation was one that there was a volatile situation, inasmuch as some people wanted to punch in and he felt he needed some assistance there." For reasons more fully described infra, it would appear that there was reason for Jennings to be intimidated.

[6] Earlier, on cross-examination, Jennings testified: "On one occasion I told them the discipline they received. The other occasions I just told them I expected them to go back to work immediately." Also, on cross-examination Jennings testified that on one occasion employees laughed when he told them he wanted them to go back to work.

[7] La Dosz' immediate supervisor advised her at 4:15 p.m., 15 minutes before her shift was to begin, that there was work available.

and 59 minutes, and they can't do anything to you."[8] Duncan testified that Lins said: We are going back to work at 12 midnight." And Burge testified that Lins responded: "Go to work. No problem. Go to work." It was also Burge's testimony that he did not recall Lins mentioning "22 hours, 23 hours." Also, Burge pointed out that the 24-hour period would have expired at 7 a.m. on the following day. If the midnight shift had not reported, the maximum possible disciplinary action McLean could have taken for what it was asserting was an unauthorized work stoppage would have changed from a 30-day suspension to discharge during that shift—at 7 a.m. on March 25. All agreed that the question was asked, an answer was given, and the employees on the midnight shift were to report to work. As indicated infra, they did. The dispute focuses on Lins' reply. However, even if La Dosz is credited over Duncan and Burge, and she is, Lins' erroneous advice given 15 hours after the fact—after the alleged work stoppage commenced—cannot be said to have misled those who participated in it at its inception.

La Dosz and Lewis testified that no union representative advised them of the possibility of discipline. Duncan testified that he never, and he never heard any union business agent, caution employees about the possibility of discipline. And Burge testified that he did not, and to his knowledge neither did any other business agent, caution employees that they could be disciplined. Duncan testified that March 24 was the same as March 18 since no supervisor "would ever come in and tell you to go to work. So I thought they were condoning it." Earlier Duncan testified that on five occasions during March 24 Jennings advised the employees that there was work available but he did not order anybody back to work. Assertedly, Duncan did not even think about the possibility of discipline. Burge testified that if McLean had advised the Union that it was in an unauthorized work stoppage or in other words

> . . . [i]f the Company had given us a direct order and there had been lines drawn, so to speak, to where there was an absolute confrontation, yes, sir, those employees would have been advised of the responsibilities of the Union and of their responsibilities, and of any punishment that may have been dealt out under the terms of the Teamster contract.

Jennings left the terminal at 7 p.m. on March 24. At midnight he received a telephone call from his dispatcher who said that midnight shift employees were reporting to work; that a number of people also came to the terminal who were not McLean employees and some were Local 299 business agents, namely, Burge, Langkil, and Grayhek, and Lins; and that McLean's dock foreman John Bahadurian had been beaten up. Jennings told the dispatcher to call the police. About 12:30 a.m., March 25, Jennings arrived at the terminal. Representatives of Local 299 were still there, along with a number of other people whom Jennings did not recognize. When Jennings tried to go to the end of the dock Burge, Greyhek, and Langkil physically blocked his way. Subsequently representatives of Local 299 left and the police arrived.

Within days, McLean advised those of its employees who did not work on March 24 after 7 a.m. that they would be suspended for 30 days without pay, under article 8, section 2(b) of the National Master Freight Agreement for participating in an unauthorized work stoppage on March 24. (G.C. Exh. 3.) The employees, including the Charging Party, filed grievances asserting that they were not involved in a work stoppage.

By letter dated September 5, signed by the union chairman Frank E. Fitzsimmons and the Employer chairman Arthur H. Bunte Jr., McLean and Local 299 were notified of the following:

> Please be advised that at the National Grievance Committee, on September 4, 1980, a motion was made that based on the Subcommittee Report, the Union did participate in an unauthorized work stoppage in violation of the Agreement. Motion deadlocked.

In October these grievances went before the Michigan Joint State Arbitration Committee pursuant to the contract. The decision of the committee reads as follows:

> The Committee finds that this grievance is improperly before the Committee, pursuant to the mandates of Article 8, Section 2(b) of the Contract which specifically provides that an employer has the sole and complete right of reasonable discipline, including suspension from employment, up to and including 30 days for unauthorized work stoppages of less than 24 hours in duration and that employees subject to said discipline shall not be entitled to or have any recourse to the grievance procedure. [G.C. Exh. 5.]

Two civil actions were initiated over the suspensions. The one which involved McLean against the Union was settled. (G.C. Exhs. 6 and 7.) The other, which involves the suspended employees against McLean, was pending on appeal at the time of the hearing herein. (R. Exh. 6.)

B. *Contentions*

The General Counsel, on brief, contends that in the instant case the Union clearly initiated a work stoppage by misleading its members in that it informed them they were merely attending a meeting while at the same time it (a) withheld from them the information that McLean considered their actions to be a work stoppage, and (b) subjected them to a contractually imposed disciplinary

[8] Although it was not covered on direct, one of the counsel for Respondent asked La Dosz on cross-examination whether she remembered someone at the meeting getting up and saying, "Why don't we put McLean on strike?" La Dosz did not. Duncan and Burge, both of whom attended the meeting at Local 299, testified that they heard someone call for a strike. The former testified that "a couple [of people] at the meeting wanted to go on strike"; that Lins said: "No, we are not going to go on strike"; and that he didn't really remember "him [Lins] responding. He just said, you know, like shaking his head no." The latter testified that "someone from the floor suggested that we go on strike" and Lins responded, "Hell, no." So, one of the Respondent's witnesses has Lins giving a nonverbal response and the other has Lins giving just the opposite, an exclamatory response of the type which a hearer would normally remember. La Dosz did not. She is credited.

layoff by failing to respond to McLean's telegrams thus assuring that the work stoppage would be held to be unauthorized under the contract. Assertedly "[t]he members had a right to expect better from their statutory exclusive bargaining representative." (G.C. Brief p. 12.)

Respondent, on brief, argues that this matter rests on the reasonable reliance of the Union on a past practice, namely, the employer meeting with employees and the Union during business hours, something which the Union is fully entitled to do. Assertedly the burden which the General Counsel seeks to impose herein "goes beyond mere negligence, and requires an obligation to be placed upon the union to advise employees of *every* conceivable result that may occur in a given situation, regardless of reasonable reliance on the part of the union to the contrary." (Emphasis added.) (R. Br. 38.)

C. *Analysis*

As noted above, Respondent stands accused of instigating and causing a work stoppage in violation of a no-strike clause without accurately informing its members of possible discipline.

Did the work stoppage violate the contractual no-strike clause? Respondent argues that it was relying on past practice. The facts, however, do not support this contention. Also, it did not make this assertion on March 24 in that it did not reply to McLean's mailgram. Three days before the work stoppage began, Langkil disclosed his true intentions when he spoke with one of the business agents who accompanied him, Burge. Langkil did not tell Burge that he was either to assist in a meeting or an inspection, but rather that he would be needed because Langkil expected a "volatile situation" at McLean's Detroit terminal on Monday morning. Jennings did not authorize any meeting on March 24. Unlike March 18, Jennings asked the employees to go to work during the period in question. The above-described mailgrams are objective evidence of how Jennings and McLean viewed what was occurring on March 24. While some employees may initially have believed that they were going to participate in a meeting similar to the one conducted on March 18, they were disabused of this mistaken impression when Jennings did not engage in an exchange with them but rather asked them to work, when at least some of them were advised by a union representative that they were not working because they were "protest[ing] the elimination of the day-dock worker shift," when some of them either played or saw their fellow employees playing cards on company time, when some of them laughed at Jennings when he asked them to go to work, and when they left the terminal without permission on company time and attended a meeting at the union hall. The Union instigated and caused a work stoppage in violation of the no-strike clause. While most, if not all, of the employees realized or should have realized that they were engaged in a work stoppage, it was not demonstrated that the employees knew the work stoppage was in violation of the contract and subjected them to possible sanctions.

Before the Board first held that a union's breach of its statutory duty of fair representation violates Section 8(b) of the Act in *Miranda Fuel Co.*, 140 NLRB 181 (1962), the Supreme Court in *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953), while discussing the statutory obligation of a union to its members, stated that:

> The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to *complete good faith* and *honesty of purpose* in the exercise of its discretion. [Emphasis added.]

In *Miranda*, supra, at 184 the Board quoted the following language:

> When the . . . union accepted certification [under the Act] as the bargaining representative for a group it accepted a trust. It became bound to represent equally and in good faith the interests of the whole group.

And subsequently, id. at 185, the Board concluded:

> A labor organization as a statutory bargaining representative is *not* the same entity under the statute as an employer; for labor organizations, because they do represent employees, have statutory obligations to employees which employers do not.

And, id. at 189, it concluded:

> The requirement of fair dealing between a union and its members is in a sense fiduciary in nature and arises out of two factors. One is the degree of dependence of the individual employee on the union organization; the other, a corollary of the first, is the comprehensive power vested in the union with respect to the individual.

The Supreme Court pointed out in *Vaca v. Sipes*, 386 U.S. 171, 182 (1967):

> The collective bargaining system as encouraged by Congress and administered by the NLRB of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit.

In the instant proceeding, the Union placed the interests of three individuals above the collective interests of all employees in the bargaining unit. Its intimidation tactics, beginning with showing up at 7 a.m. on March 24 with a number of business agents and ending with physically denying Jennings access to a part of his terminal at 1 a.m. the following morning, were improper. Also improper was its use of the employees as leverage without advising them of their obligation under the contract and the possible consequences of their actions. It is immaterial that the employees, out of sympathy for the plight of the three day-dock workers and in reaction to Jennings' recent disciplinary actions, may have participated in the work stoppage notwithstanding possible sanctions. Such a showing, for obvious reasons, was not made; it is not known whether they would have knowingly and willingly assumed the risk involved. In these circumstances, Respondent had a fiduciary obligation to make sure the em-

ployees were aware of the possible consequences of their action and extend to them a choice. This it did not do. Accordingly, it violated Section 8(b)(1)(A) of the Act, as alleged by the General Counsel.

CONCLUSIONS OF LAW

1. McLean Trucking Co. is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.
3. By failing fairly to represent those of its members who are employed by McLean Trucking Co. at its Detroit terminal on March 24, 1980, Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act.
4. The unfair labor practices described in paragraph 3 above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent, failing to fulfill its fiduciary obligation to the involved members, shall make whole, with interest, the loss of pay suffered by those of its members suspended by McLean Trucking Co. for the March 24, 1980 work stoppage.[9]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing fairly to represent its above-described members in violation of Section 8(b)(1)(A) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Make whole those of its members described in footnote 9 above for any loss of pay they suffered as a result of the unfair labor practices found herein, with interests computed thereon in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[11]

(b) Post in its business office and meeting places, copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent's representatives, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Sign and mail sufficient copies of said notice to the Regional Director for Region 7, for posting by McLean Trucking Co., at all locations where notices to employees are customarily posted, if McLean Trucking Co. is willing to do so.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

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[9] The following were suspended:

Anthony Dormarito	John Banton
John Scoby	Michael Sloan
Donald Dost	Stanley Wormisk
Dennis Conley	Edwin McGlester
Garry Driaty	Charles Housmen
Robert Axt	Joyce Culp
Richard Wiggins	Larry Phillips
Albert Waelan	Peter Lach
Edward Zamenski	Kenneth Plocharczyk
John Danis	David Pitel
Nathan Valentine	Anthony Konchel
Leonard Miahlopey	David Bellemir
Golden Mullens	Robert Francis
Linwood McGowan	David Bowman
Charles Warren	Paul Valle
Joseph Lawrence	Gerald Honeycutt
David Schialar	Fred Thompson
Gladys Adams	James Proston
Walter Holowitz	Ronald Bise
Christopher Kurbel	William Rouse
DeWayne Schlaf	George Knowles
Lawrence Boom	Douglas Brown
Raymond Ruhtz	Timothy Curry
Gerald LaBond	Judith Dolan
Carey Misk	Sharon Ladosz
John Colwall	Barbara Authier
James Eggleston	Darrow Campbell
Willie Laverett	Laurene Ayers
Robert Massey	Demgen

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[12] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to represent our members who are employed by McLean Trucking Co. at its Detroit, Michigan terminal.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole for any loss of pay suffered, with interest thereon, members employed by McLean Trucking Co. at its Detroit, Michigan terminal on March 24, 1980, who were suspended as a result of our unfair labor practices.

LOCAL 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA